

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**LISA A. FISHER,**

**No. 24218-8-III**

**Appellant,**

**v.**

**Division Three**

**DEPARTMENT OF LABOR &  
INDUSTRIES OF THE STATE OF  
WASHINGTON,**

**Respondent.**

**UNPUBLISHED OPINION**

**SWEENEY, C.J.**—This is an appeal from the dismissal of a Department of Labor and Industries claim. The question is whether untimely service of the notice of appeal on the Board of Industrial Insurance Appeals deprived the superior court of jurisdiction. It did. And we therefore affirm the superior court’s dismissal of the appeal.

**FACTS**

Lisa A. Fisher appealed an adverse decision by the Department of Labor and Industries to the Board of Industrial Insurance Appeals. The Board entered a final decision in favor of the Department on October 14, 2004. Ms. Fisher appealed the

No. 24218-8-III  
Fisher v. Dep't of Labor & Indus.

Board's decision to the Grant County Superior Court on October 22. She sent copies of the notice of appeal to the Department's counsel and the employer's representative. She failed, however, to send a copy of the notice of appeal to the Board.

The Department's lawyer asked Ms. Fisher by letter on November 24 whether she sent a copy of the notice of appeal to the Board. She immediately sent a copy of the notice of appeal to the Board on November 30. The Board received the notice of appeal on December 3, 2004.

The Department moved to dismiss for lack of subject matter jurisdiction. It argued that Ms. Fisher failed to timely serve a copy of the notice of appeal upon the Board. The court dismissed the appeal.

## **DISCUSSION**

Ms. Fisher argues that she *substantially* complied with the statutory notice requirements. And what she describes as "all interested parties" did receive copies of the notice.

Subject matter jurisdiction is a question of law and so our review is de novo. *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).

The Washington Industrial Insurance Act, Title 51 RCW, abolished all court jurisdiction over claims for workplace injuries, except as expressly provided by statute. *Id.* at 314-15; *Hernandez v. Dep't of Labor & Indus.*, 107 Wn. App. 190, 195-96, 26 P.3d

No. 24218-8-III  
Fisher v. Dep't of Labor & Indus.

977 (2001). Decisions of the Board are appealed to the superior court. RCW 51.52.110; *Hernandez*, 107 Wn. App. at 195. The court's jurisdiction is statutory and "all statutory requirements must be met before jurisdiction is properly invoked." *Fay v. Nw. Airlines, Inc.*, 115 Wn.2d 194, 197, 796 P.2d 412 (1990) (quoting *Spokane County v. Utils. & Transp. Comm'n*, 47 Wn. App. 827, 830, 737 P.2d 1022 (1987)). The court's "jurisdiction may not be presumed." *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 408, 842 P.2d 1006 (1992).

RCW 51.52.110 requires that a party appeal a final decision by the Board within 30 days. The statute also requires that an appellant serve the Board. RCW 51.52.110. And both the filing *and* the service requirements must be met within the 30-day period. *Fay*, 115 Wn.2d at 198, 201; *Hernandez*, 107 Wn. App. at 196.

But substantial compliance is enough. *Fay*, 115 Wn.2d at 198-99. That means compliance but with some procedural defect. *Black v. Dep't of Labor & Indus.*, 131 Wn.2d 547, 552, 933 P.2d 1025 (1997). At a minimum, however, substantial compliance requires actual notice or some service "reasonably calculated to succeed." *Hernandez*, 107 Wn. App. at 196. And there must be some type of actual compliance with the statute. *Id.* at 196-97; *Petta*, 68 Wn. App. at 409-10.

Here, Ms. Fisher failed to provide the Board with actual notice of the appeal within the required 30-day time period. RCW 51.52.110; *Fay*, 115 Wn.2d at 197. Nor

No. 24218-8-III  
Fisher v. Dep't of Labor & Indus.

did she provide the Board with timely notice of the appeal by a method reasonably calculated to succeed within the 30-day limit. *Hernandez*, 107 Wn. App. at 196. She did not then substantially comply with the jurisdictional requirements in RCW 51.52.110. *Id.* at 196-98.

The court properly dismissed the case since it lacked jurisdiction. *Fay*, 115 Wn.2d at 201. And we affirm that decision.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, C.J.

WE CONCUR:

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Schultheis, J.

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Brown, J.